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Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

Proposals and contributions received from Governments

Addendum

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* A/AC.254/24.

II. Proposals and contributions received from Governments

Belgium*

[Original: French]

Article 4: Scope

The following new paragraph should be added:

"(...) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law shall not be governed by this Protocol."

China**

[Original: Chinese and English]

Article 4: Scope

1. China proposes that article 4, on scope, should read as follows:

"This Protocol applies to all classes of commercially traded and manufactured firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security or to firearms manufactured exclusively to equip a State Party's own army or security force."

Article 9: Marking of firearms

Subparagraph 1 (a)

2. Manufacturers in China are obliged by law to put the appropriate marking on every firearm at the time of its production, regardless of what the firearm is destined to be used for (i.e. whether it is for military use or civilian use). However, markings may differ depending on what the firearms are to be used for. China is of the view that the criteria for determining what is an appropriate marking should be whatever enables the competent agency of a State Party to trace the source of the firearm. Therefore, it would be sufficient to require the marking to include the country of manufacture while leaving it to each State Party to decide what other information should be included in the marking. To make it more convenient to identify the country of manufacture, a universal system of country codes could be considered.

Subparagraph 1 (b)

3. China does not require the marking of imported firearms. More consideration and discussion should be given to the provision in subparagraph 1 (b) as it appears now. Bearing in mind the various practices in different countries concerning imported firearms, it might be sufficient for firearms to bear unique and identifiable markings that are recorded in full during the process of exporting and importing the firearms. Thus, subparagraph 1 (a) of article 9, in combination with subparagraph 1 (a) of article 8, could

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* Amendment previously issued in document A/AC.254/5/Add.16.

** Amendments previously issued in document A/AC.254/L.78.

solve the problem of tracing imported firearms, thus relieving States Parties of the task of having to make changes in their current legislation and practices. In any case, the importing countries could decide whether to mark the imported firearms or not following their importation.

Article 10: Preventing the reactivating of deactivated firearms

4. China supports the idea of preventing the reactivating of deactivated firearms but the provision in article 10 needs further clarification.

Article 11: General requirements for export, import and transit licensing or authorization systems

5. As for article 11, China has no particular difficulty with the requirements regarding export and import, but it has reservations with regard to transit licensing and retransfer authorization as the relevant provisions need to be clarified further. First and foremost, the definition of "transit" itself needs further clarification. In the view of China, the requirement of transit licensing inevitably imposes a heavier burden on the transit country. Besides, whether it is the importer or the exporter who should apply for the transit licence is not clear in the current provision. The relationship between transit and trans-shipping also needs clarification.

6. With regard to the requirement for written approval from the exporting country prior to re-export or retransfer, China is of the view that how to dispose of the imported firearms is the sovereign right of the importing country because, in general, once goods are delivered to the importer, the right of ownership is passed on to the importer, who in turn is responsible for the disposition of the goods. End-user certification could help to prevent the re-export or retransfer of firearms without the approval of the exporting country.

Article 14: Exchange of information

Paragraph 1

7. In paragraph 1, China proposes to add the words "and taking into account their legitimate security or commercial concerns," after the words "applicable to them".

Article 17: Confidentiality

8. China proposes to modify the last sentence in article 17 to read as follows:

> "If for legal reasons such confidentiality cannot be maintained, the State Party that is to provide the information shall be notified prior to its provision of the information."

Colombia

[Original: English]

Preamble

1. It is proposed that a new subparagraph be added to read as follows:

> "(...) *Convinced* that the illicit international trade in firearms, their parts and components, ammunition, explosives and other related materials constitutes a

specific risk to the security and well-being of States Parties and that measures to promote further cooperation among States Parties, in particular by the promotion of harmonized controls over the legal import and export of firearms, their parts and components, ammunition, explosives and other related materials and of procedures for applying them, will assist in preventing and eradicating such illicit trade."

Article 2: Definitions

2. The following new subparagraph should be added:

"(...) 'In-transit country' shall mean the country through which a shipment is moved, which is neither the country of origin nor the country of final destination."

Article 3: Purpose

3. The following new subparagraph should be added:

"(...) To set out harmonized measures and procedures for monitoring and controlling the international movement of firearms, parts and components, ammunition, explosives and other related materials, in order to prevent their illicit trafficking and diversion for illegal uses and purposes."

Article 4: Scope

4. The following new option should be added:

"Option ...

"This Protocol shall apply in national jurisdictions, free-trade zones, free ports and other customs divisions."

Article 5: Criminalization

5. The following new subparagraphs should be added to paragraph 1:

"(...) The purchase or possession of illicitly manufactured or trafficked firearms, their parts and components, ammunition, explosives and other related materials;

"(...) The organization, management or financing of the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials."

6. Paragraph 2 should be amended to read as follows:

"2. The participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Protocol shall also be considered criminal offences."

7. Paragraph 3 should be amended to read as follows:

"3. Each State Party shall make the person or persons who commit any of the offences established in accordance with this Protocol subject to criminal sanctions that take into account the grave nature of the offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation. This provision should be interpreted without prejudice to the administrative, civil and other forms of sanctions that may apply."

8. The following new paragraphs should be added:

"... States Parties shall ensure that their courts and other competent authorities having jurisdiction over the offenders under this protocol take into account, when prosecuting such offenders, factual circumstances that make the commission of offences established in accordance with this Protocol particularly serious, such as:

"(a) Involvement in the offence of an organized criminal group to which the offender belongs;

"(b) Involvement of the offender in other international organized criminal activities;

"(c) Involvement of the offender in other illegal activities facilitated by the commission of the offence;

"(d) The violent use of illicitly trafficked arms and explosives by the offender;

"(e) The fact that the offender holds a public office, whether or not the offence is connected with the office in question;

"(f) The use of minors in the commission of an offence listed in this article.

"... States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences established in this Protocol and the circumstances described in article 5, paragraph 4, of this Protocol when considering the sanctions to be imposed on the offender.

"... Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of the legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Article 8: Record-keeping

9. Replace paragraphs 1 and 2 with the following:

"1. Each State Party shall maintain its own records of import, export and in-transit shipments of firearms, their parts and components, ammunition, explosives and other related materials, recording, classifying and describing the actual quantities and [proceeding] involved in each shipment transaction. In the case of export and import transactions, records shall be maintained by the appropriate authorities that reflect the quantities of firearms, their parts and components, ammunition, explosives and other related materials remaining to be exported or imported, as the case may be, based on the corresponding certificates.

"2. Records shall be kept for a period of not less than five years after the last transaction effected under the corresponding certificate, to enable each State Party to trace and identify illicitly manufactured and trafficked firearms, their parts and components, ammunition, explosives and other related materials. States Parties shall identify to one another the authority responsible for record-keeping."

10. The following new paragraph should be added:

"... States Parties that already possess computerized information systems and the associated technical competence and expertise shall agree to share that technology and knowledge with interested participating States Parties, in order to facilitate and harmonize record-keeping and information-sharing."

Article 9: Marking of firearms

11. The title of article 9 should read as follows: Marking of firearms, ammunition and explosives.

12. The following new subparagraphs should be added to paragraph 1:

"(...) Require appropriate markings to be applied to ammunition, by head-stamping or embossing on the base of each cartridge case during the manufacturing process numbers, letters, trademarks, symbols or other codes used to identify the country or factory of origin, the year of production, the lot number and the calibre;

"(...) Require appropriate markings on the packaging of ammunition and explosives (military explosives, commercial explosives and their associated accessories, including detonators and blasting caps), including detailed information about their designation, nature, calibre, type, manufacturer, year and lot of manufacture, as well as other codes associated with transport and storage safety."

Article 11: General requirements for export, import and transit licensing or authorization systems

13. The following new paragraphs should be added:

"... Pursuant to article 3, subparagraph (c), of this Protocol, harmonized measures and procedures for monitoring and controlling the international movement of firearms, their parts and components, ammunition, explosives and other related materials include the following documentation:

"(a) Export certificates. An export certificate shall accompany each shipment. Each export certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(b) Export attachment. The export attachment shall contain information required by all States, with the serial numbers of the firearms, their parts and components, ammunition, explosives and other related materials being shipped, within each classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, and specifying all shipping modes and shippers, as outlined in the annex to this Protocol;

"(c) Import certificate. An import certificate shall be given to an applicant who meets the applicable domestic legal requirements and provides the applicable information. The import certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(d) In-transit shipment authorization. The competent authority of an in-transit country shall issue an in-transit shipment authorization to an applicant who meets the pertinent domestic legal requirements, who provides the information required and who supplies an original or a certified copy of the import certificate issued by the country of final destination and an original or a certified copy of the export certificate and export attachment, as described in article 5 of this Protocol and outlined in the annex to this Protocol;

"(e) Verifying competent authority. Where applicable, the importing country shall release the shipment to the person who satisfies the competent authority that he or she is the authorized representative identified on the import certificate, upon confirming that the contents of the shipment and the identity of the importer or final

recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements.

"...The following general conditions shall apply to all certificates, attachments and authorizations:

"(a) *Validity period for import certificates, export certificates and attachments and in-transit shipment authorization*. Each import certificate shall specify an expiry date (generally considered to be one year from the date of issue). Each export certificate and export attachment and in-transit shipment authorization shall specify a maximum validity period that shall not extend beyond the expiry date of the import certificate;

"(b) *No extension of the validity period*. The validity period of all certificates, attachments and authorizations granted shall not be extended. Upon expiry of the validity period of a certificate, attachment or authorization, a new application must be submitted;

"(c) *Authorized quantities*. All import certificates, export certificates or attachments, or in-transit shipment authorizations shall indicate the authorized quantities of each type of firearm, parts and components or ammunition and explosives, as the case may be, duly identified by its applicable form of classification and description, that may be shipped pursuant to those documents;

"(d) *Authenticity of certificates and other documents*. To ensure the authenticity of all certificates, attachments and authorizations and any other documentation required to be submitted to authorities under these regulations, only original and certified copies shall be accepted or, if agreed to by the competent authorities of the countries concerned, the documentation may be transmitted by electronic means;

"(e) *Modification of certificates and other documents*. The modification of certificates, attachments and authorizations shall only be permitted to be made by the competent authority within the validity period and with respect to the following matters:

"(i) For all certificates: the country of origin of firearms, their parts and components, ammunition, explosives and other related materials for export;

"(ii) For export attachments and in-transit shipment authorizations: planned shipment information, shipping routes, ports of entry and exit, modes of shipment, shipping dates and shippers for individual shipments;

"(iii) All changes except [...] shall require authentication, such as stamps, seals and authorized signatures, on the front side of the modified certificates or other documents.

"...The steps to be followed for the exportation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the country of export may issue an export certificate to an applicant who:

"(i) Meets the applicable domestic legal requirements;

"(ii) Provides the applicable information outlined in the annex to this Protocol; and

"(iii) Supplies the original or a certified copy of the import certificate referred to in article [5] of this Protocol;

"(b) The competent authority shall only authorize the export of firearms, their parts and components, ammunition, explosives and other related materials pursuant to an export certificate when the applicant provides to the competent authority the export attachment information outlined in the annex to this Protocol. The export attachment information may be provided on a portion of the export certificate or on an export attachment;

"(c) Where the firearms, their parts and components, ammunition, explosives and other related materials are to pass through an in-transit country or countries before reaching the country of final destination, the exporter shall also provide to the verifying agency of the country of export an in-transit shipment authorization from each in-transit country;

"(d) The competent authority shall send the original or a certified copy of the export certificate and export attachment, including the information outlined in the annex to this Protocol, to the verifying agency of the importing country and, where applicable, to the competent authority of each in-transit country;

"(e) The shipper identified by the exporter on the export attachment shall present the firearms, their parts and components, ammunition, explosives and other related materials, together with the original or a certified copy of the export certificate and export attachment, to the verifying agency of the exporting country and, upon verification by the latter, the shipment may be exported.

"...The steps to be followed for the importation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the importing country may issue an import certificate to an applicant who meets the applicable domestic legal requirements and who provides the applicable information outlined in the annex to this Protocol;

"(b) The importer shall provide an original or certified copy of the import certificate to the exporter for presentation to the competent authority of the country of export, as required under article [5] of this Protocol;

"(c) The verifying agency of the importing country, upon confirming that the contents of the shipment and the identity of the importer or final recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements, shall release the shipment to the person who satisfies the verifying agency that he or she is the authorized representative identified on the import certificate.

"... Steps to be followed for an in-transit shipment are:

"(a) The competent authority of an in-transit country may issue an in-transit shipment authorization to an applicant who meets the applicable domestic legal requirements, who provides the information outlined in the annex to this Protocol and who supplies the following documents:

"(i) An original or a certified copy of the import certificate issued by the country of final destination; and

"(ii) An original or a certified copy of the export certificate and export attachment described in this article;

"(b) The recipient of the in-transit shipment authorization shall provide an original or certified copy of the authorization to the exporter for presentation to the verifying agency of the country of export, as required under this article;

"(c) The verifying agency of the in-transit country, upon confirming that the contents of the shipment and the identity of the shipper are in accordance with the information specified in the import certificate, export certificate, export attachment and in-transit authorization and that domestic legal requirements have been met, shall permit the in-transit passage of the shipment."

Article 14: Exchange of information

14. The following new paragraphs should be added:

"... Each State Party shall designate a central information office to receive and fulfil information requests from participating countries concerning import, export and in-transit shipment transactions of firearms, their parts and components, ammunition, explosives and other related materials. Where the information is required for judicial proceedings, it shall be provided on a basis consistent with existing agreements for such purpose.

"... Information on all known aspects of activities relating to the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials shall be provided to and collected by the International Criminal Police Organization for access by participating countries. If possible, States Parties shall make this information available in electronic form to facilitate the tracing and confiscation of the weapons and the capture of the offender."

Article 15: Cooperation

15. The following new paragraph should be added:

"... For the purpose of cooperation among States Parties to this Protocol, including, in particular, cooperation under article 9 of this Protocol, offences established in accordance with article 5, paragraph 1, of this Protocol shall not be considered fiscal offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic laws of the States Parties.

Article 18 bis: Registration and licensing of brokers

16. The title of article 18 *bis* should be amended to read as follows:

Registration and licensing of brokers, retailers and transportation agents.

17. The text of the article should be replaced with the following:

"To prevent and combat the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials, each State Party shall regulate and monitor, when applicable, legitimate commercial activities by licensing and registering all persons of its nationality who engage in such transactions, such as:

"(a) Retailers and wholesalers who buy and sell firearms, their parts and components, ammunition, explosives and other related materials;

"(b) Brokers who arrange such transactions (that is, persons who gain material benefit from financing or facilitating such transactions);

"(c) Transportation agents who arrange for the delivery of such goods (that is, persons who ensure the transportation of the goods so that the transactions may be completed)."

Annex

18. The following annex should be added:

"Annex

"1. All import certificates, export certificates or attachments or in-transit shipment authorizations shall indicate the authorized quantity of each type of firearm, parts and components, ammunition, explosives and other related materials (listed by classification and description) that may be shipped pursuant to those documents, as outlined in this annex.

"Export certificates

"2. Each export certificate shall contain the following information:

"(a) Domestic export certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing officer's name and signature;

"(e) Exporter identification: the exporter's name, address, telephone number and facsimile number and the representative's name (if the exporter is a commercial body) and signature;

"(f) Exportation authorization: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for export, listed by classification and description;

"(g) Certificate expiry date: date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be shipped pursuant to the export certificate or the date of expiry of the certificate, whichever is earlier;

"(h) Importing country information (domestic import certificate): the name of the country of issuance, the date of issuance of the certificate, the competent authority, the importer and final recipient, the authorized quantity

of firearms, their parts and components, or ammunition and explosives, and other related materials to be imported and the certified expiry date;

"(i) Importer identification: the importer's name, address, country code of residence and citizenship (if the importer is an individual) and the representative's name (if the importer is a commercial or government body);

"(j) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, country code of residence and citizenship if the final recipient is an individual and the representative's name if the final recipient is a commercial or government body;

"(k) Country of origin of the firearms, parts and components, ammunition, explosives and other related materials: the name or unique country code;

"(l) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) shipped to date pursuant to the export certificate;

"(m) Additional descriptive information concerning the firearms, parts and components that is required in some countries, such as barrel length, overall length, action, the number of shots, the manufacturer's name and the country of manufacture.

"Export attachments

"3. Each export attachment shall contain the following information:

"(a) Shipment information: the serial numbers of the firearms, parts and components, ammunition, explosives and other related materials (where applicable) being shipped, listed by classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, specifying all shipping modes and shippers;

"(b) For each shipper identified above: the shipper's name, address, telephone number and facsimile number, and the representative's name and signature (if the shipper is a commercial or government body);

"(c) Information on prior shipments, if any, made against the export certificate and the dates of exit of previous shipments: the quantity of the firearms, parts and components, ammunition, explosives and other related materials involved (listed by classification and description) in each shipment, the cumulative quantity of all shipments sent prior to this shipment and the shipper's name.

"Import certificates

"4. Each import certificate shall contain the following information:

"(a) Domestic import certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing officer's name and signature;

"(e) Importer identification: the importer's name, address, telephone number, facsimile number and country of residence and, if the importer is a commercial or government body, the representative's name, citizenship and signature;

"(f) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, telephone number, facsimile number and country of residence and, if the final recipient is a commercial or government body, the representative's name, citizenship and signature;

"(g) Importation authorized: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for import, listed by classification and description;

"(h) Certificate expiry date: the date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be imported pursuant to the import certificate or the date of expiry of the certificate, whichever is earlier;

"(i) Export country information: the name of the country of export;

"(j) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) received to date pursuant to the import certificate;

"(k) Additional descriptive information concerning the firearms or parts and components: barrel length, overall length, the number of shots, the manufacturer's name and the country of manufacture.

"In-transit shipment authorizations

"5. Each in-transit shipment authorization shall contain the following information:

"(a) Country information: domestic in-transit authorization identifier; the country of issuance, identified by name or by a unique country code; the date of issuance; and competent authority identification, including the competent authority's name, address, telephone number and facsimile number;

"(b) Identification of the applicant: the applicant's name, address, country of residence, telephone number and facsimile number and the

representative's name and signature if the applicant is a commercial or government body;

"(c) Authorization of the in-transit shipment: for each country, the in-transit shipment requirements of the competent authority including the authorized ports of entry and exit; expiry dates pertaining to authorization; any other specific information concerning the shipment while in that country, such as the periods during which the shipment is anticipated to be in bond and the anticipated location of the shipment while in bond; any restrictions or conditions imposed by the competent authority; and the authorizing officer's signature and seal."

Italy

[Original: English]

A. Amendment previously issued in document A/AC.254/L.95

Article 2

1. With reference to comments made by a number of delegations, the Italian delegation would like to present the following proposal related to the reformulation of the definition of "tracing" that appears in subparagraph (f) *bis* of article 2:

"(f) *bis* 'Tracing': the systematic tracking of firearms [and ammunition] from manufacturer to purchaser for the purpose of assisting law enforcement authorities of States Parties [and relevant intergovernmental organizations] in analysing and monitoring illicit trafficking, as well as aiding competent national authorities in identifying suspects involved in criminal violations."

B. Further amendments

Article 1

2. Paragraph 2 should be deleted.

Article 3

3. The text of article 3 should be replaced with the following:

"Bearing in mind the illegal activities carried out by criminal organizations in the area of illicit manufacturing of and trafficking in firearms as well as their use for the purpose of facilitating the unlawful enterprises of those organizations, the purpose of this Protocol is to promote and facilitate cooperation, including the exchange of information, experience and expertise, among States Parties and relevant intergovernmental organizations, in order to prevent, combat, eradicate and prosecute the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition."

Japan

[Original: English]

A. Amendments previously issued in document A/AC.254/L.94

Article 6: Jurisdiction

1. It is proposed to amend article 6 to read as follows:

"Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in article 5 of this Protocol. Article 9 of the Convention shall apply *mutatis mutandis* to the offences established pursuant to this Protocol."

Article 7: Confiscation or forfeiture

2. It is proposed to amend article 7 to read as follows:

"States Parties shall adopt such measures as may be necessary to enable the confiscation or forfeit of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked. Article 7 of the Convention shall apply *mutatis mutandis* to this Protocol."

Article 11: General requirements for export, import and transit licensing or authorization systems

3. It is proposed to amend option 2 of paragraph 3 to read as follows:

"3. States Parties, before issuing in-transit licences or authorizations and permitting the transit of firearms, their parts and components and ammunition, shall verify that the receiving States have issued the corresponding import licences or authorizations."

B. Further amendments

Article 2: Definitions

4. It is proposed to amend subparagraphs (c), (d) and (f) of article 2 to read as follows:

"(c) 'Firearms': Any lethal barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas, antique firearms and their replicas being defined in accordance with domestic law and in no case including firearms manufactured after 1899;

"(d) 'Illicit manufacturing': The manufacturing or assembly of firearms and ammunition:

"(i) From components or parts illicitly trafficked;

"(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacture;

"(e) ...

"(f) 'Parts and components': Any essential element or replacement element of a firearm, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, including any device designed or adapted to diminish the sound caused by firing the firearm."

Article 4: Scope

5. It is proposed to amend article 4 to read as follows:

"This Protocol applies to firearms, their parts and components and ammunition, but not to State-to-State transactions or transfers for the purpose of national security.

Article 8: Record-keeping

6. It is proposed to amend article 8 to read as follows:

"Each State Party shall ensure the maintenance for not less than ten years of information in relation to firearms necessary to trace and identify those which are illicitly manufactured and trafficked and to prevent and detect such activities. The information shall include:

"(a) The appropriate marking applied at the time of manufacture;

"(b) In cases involving international transactions, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries where appropriate and the final recipient, description and quantity of the articles."

Mexico

[Original: English]

Article 3

It is proposed to amend article 3 to read as follows:

"The purpose of this Protocol is:

"(a) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

"(b) To promote and facilitate cooperation and the exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials."

Netherlands*

[Original: English]

Article 11: General requirements for export, import and transit licensing or authorization systems

1. In-depth consideration of the draft Protocol will require consensus on the provisions of article 11. The position of the Netherlands and its proposals relating to article 11 are set forth below.

2. The Netherlands believes that it is of utmost importance, in the fight against the illicit trafficking in firearms, ammunition and other related materials, that mutual cooperation in criminal matters and harmonization of administrative control regimes should be achieved. The Netherlands feels that it is in the common interest of all parties to the Protocol that a comprehensive system be created. A system that does not impose a transit control mechanism risks placing an unnecessary and disproportionate burden on the administration in the various countries as well as on free trade in general. The Netherlands considers that the following proposal provides an effective means of achieving the goals set out in the Protocol:

(a) Under article 11, paragraph 2, States Parties, before releasing shipments of goods (firearms, ammunition and other related materials) must ensure that importing States have issued the necessary licences or authorization and that transit States, through a written notice, have indicated that they have no objection;

(b) Under article 11, paragraph 3, goods will be accompanied by an official routing document (that is, a document issued by the competent authorities of the State in which the exporter is established). This routing document will be marked by customs officials in the transit States upon arrival of the goods in, and/or before their departure from, the territory concerned. Without introducing new forms of control, this document and the official marking will give States Parties an accurate account of the routing of the goods and enable all relevant authorities to verify where and when the diversion of the goods occurred;

(c) The remainder of the text of article 11 should be left unchanged.

3. The Netherlands also deems it necessary to achieve consensus on the definition of the term "transit". The Netherlands looks forward to presenting its views on this matter. In that context, due consideration must be given to the particular position of transit States that participate in trade agreements and arrangements, such as customs unions and free trade areas.

4. On the basis of the foregoing considerations, the Netherlands proposes that article 11 should read as follows:

> "1. States Parties shall establish or maintain an effective system of export, import and international transit licensing or authorization for the transfer of firearms, ammunition and other related materials.
>
> "2. States Parties before releasing shipments of firearms, ammunition and other related materials for export, shall ensure that the importing States have issued the necessary licences or authorization and the transit States have given notice in

* Amendments previously issued in document A/AC.254/L.70

writing that they have no objection to the passage of the goods through their respective territories.

"3. Goods shall, at all times, be accompanied by an official routing document provided by the exporter. Transit States shall mark this routing document before the goods leave their respective territories.

"4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition and other related materials.

"5. [Written approval from the exporting country must be obtained before a State Party may authorize the re-export, transfer, trans-shipment or disposition of firearms, ammunition and other related materials.]"

South Africa, United Kingdom of Great Britain and Northern Ireland and United States of America

[Original: English]

Article 2

It is proposed to amend subparagraphs (c) (i) of article 2 to read as follows:

"(c) 'Firearm':

"(i) Any lethal barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas, antique firearms being defined in accordance with domestic law and in no case including firearms manufactured after 1899."

Syrian Arab Republic*

[Original: Arabic]

Article 7

Paragraph 2

1. It is proposed to amend paragraph 2 of article 7 to read as follows:

"2. States Parties shall dispose of the confiscated firearms and ammunition in accordance with their respective national laws."

Article 18 bis

2. The title of article 18 *bis* should be changed to read "Licensing by brokerage".

3. The words "natural or judical" should be added before the word "person".

4. The words "wherever located" should be deleted.

* Amendments previously issued in document A/AC.254/L.67.

5. The words "to register with and receive approval from his or her country of nationality" should be replaced with the words "to obtain a licence to engage in that activity from his or her country of residence".

United Kingdom of Great Britain and Northern Ireland*

[Original: English]

Article 10

The United Kingdom of Great Britain and Northern Ireland proposes changing article 10 of the draft Protocol (A/AC.254/4/Add.2/Rev.2) to incorporate general principles for the deactivation of firearms, so that the article will read as follows:

"*Article 10*

"*Preventing the reactivation of deactivated firearms*

"States Parties that have not already done so shall take the necessary measures, including the creation of specific criminal offences if appropriate, to prevent the reactivation of deactivated firearms, consistent with the general principles of deactivation set out below:

"(a) While retaining, so far as is practicable, the aesthetic outer appearance of the firearm, all essential parts of the firearm are to be rendered permanently inoperable and incapable of being removed for replacement parts or other modifications that might permit the firearm to be reactivated in any way;

"(b) Arrangements are to be made for deactivation measures to be certified by a designated proof house (or other appropriate authority) to verify that the modifications made to a firearm meet the relevant standard for that type of firearm;

"(c) Certification by the proof house (or other appropriate authority) must include a clearly visible identifying mark stamped on the firearm and the issuance of a certificate recording that fact, including the make, model and serial number of the firearm.

"*Note*: For greater clarity, the following minimal modifications in respect of the parts listed below are considered necessary to render them unsuitable for use in any other firearm:

"(a) Barrel:

"(i) *Revolver*: barrel to be slotted, pinned to frame, over-bored or filled with a tight-fitting steel rod to block its length;

"(ii) *Pistol*: barrel to be slotted or over-bored; or a tight-fitting steel rod to be welded to block its length;

"(iii) *Machine gun*: barrel to be slotted or over-bored; or a tight-fitting steel rod to be welded to block its length; barrel to be pinned and welded to receiver;

"(iv) *Rifle*: barrel to be slotted, over-bored or filled with a tight-fitting steel rod to block its length; barrel to be pinned and welded in place;

* Amendment previously issued in document A/AC.254/L.93.

"(b) Chamber: to be plugged or pinned to prevent the chambering of a cartridge or the loading of a powder charge;

"(c) Firing pin: to be removed, shortened or ground off;

"(d) Revolver cylinder: central section to be cut away to open up all chambers and to be pinned as above;

"(e) Breech face: to be cut away at an angle of 45°;

"(f) Breech bolt: recoil face to be cut away at an angle of 45°;

"(g) Rifle bolt: locking lugs to be cut away at an angle of 45°;

"(h) Trigger mechanism: to be disabled;

"(i) Slide: recoil face to be cut away at an angle of 45°;

"(j) Frame: two thirds of the length of the slide rail, feed ramp, locking shoulders and support to be removed;

"(k) Receiver: all working parts to be welded together;

"(l) Gas piston: to be removed;

"(m) Magazine: top plate to be welded to wall."

United Kingdom of Great Britain and Northern Ireland and United States of America

[Original: English]

Article 2

It is proposed to amend subparagraph (f) of article 2 to read as follows:

"(f) 'Parts and components': any essential element or replacement element of a firearm, including a barrel, frame or receiver, slide or cylinder, bolt or breech block and also including any device designed or adapted to diminish the sound caused by firing the firearm."

United States of America*

[Original: English]

Proposal on brokering

1. During the third session of the Ad Hoc Committee, a number of delegations raised questions concerning article 18 *bis* (Registration and licensing of brokers) of the draft Protocol. In response to those questions, the United States of America offered to redraft the text of that article. Recommended language for articles 5 and 18 *bis* is presented below.

* Amendments previously issued in document A/AC.254/L.84.

Article 5: Criminalization

Paragraph 1

2. It is proposed that the following language be added to the end of paragraph 1 of article 5:

> "(f) Acting on behalf of others, in return for a fee or other consideration, in negotiating or arranging transactions involving the international export or import of firearms, their parts or components, or ammunition without registering and obtaining a licence or other written authorization in accordance with the requirements of article 18 *bis* of this Protocol."

Article 18 bis: Registration and licensing of brokers

3. It is proposed that the following be substituted for the existing language of article 18 *bis*:

> "States Parties that have not done so shall take steps to require persons who act on behalf of others, in return for a fee or other consideration, in negotiating or arranging transactions involving the international export or import of firearms, their parts or components, or ammunition:
>
> "(a) To register with their country of nationality and with the country where the negotiations or arrangements referred to above take place; and
>
> "(b) To obtain, for each transaction, a licence or other written authorization from the country where the negotiations or arrangements referred to above take place."

United Nations A/AC.254/5/Add.19

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Proposals and contributions received from Governments

Addendum

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II. Proposals and contributions received from Governments*

Belarus: amendments to the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Article 1: Purpose

Option 1

1. While supporting option 1 of this article, Belarus feels that the list of purposes of international trafficking set out in paragraph 1 should be supplemented after the words "sexual exploitation" by the phrase "or for the purpose of the removal of body parts or organic tissue".

Article 2: Scope of application

Option 1

2. A similar addition is also proposed for option 1 article 2, paragraph 2.

Article 3: Obligation to criminalize

Paragraph 2

3. The types of conduct enumerated in paragraph 2 as acts to be established as criminal offences should be supplemented by the conduct consisting of the utilization of abducted persons but not involving participation in the offences indicated in this paragraph.

Article 7: Victim rehabilitation**

Paragraph 1

4. It is not clear from article 7, paragraph 1, whether or not the envisaged measures are to apply to all persons or only to victims who are nationals of a State Party providing for such measures.

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* At the sixth session of the Ad Hoc Committee, it was decided to adopt a reorganized text proposed by Belgium, Poland and the United States of America (A/AC.254/5/Add.13). This involved a substantial renumbering of articles and some transfers of text from one article to another. For ease of reference, references to articles in proposals and contributions contained in this addendum have been renumbered to the extent possible.

** Based on the text of the Protocol contained in document A/AC.254/4/Add.3/Rev.4.

Belgium*

[Original: French]

Article 1: Purpose

Option 1

1. Paragraph 2 (d) of option 1 should be revised to read:

"(d) To ensure that victims who return to their country of origin or of habitual residence or to a third country do so voluntarily and under duly safe conditions;"

2. Paragraph 2 (f) should be revised to read:

"(f) To provide essential medical assistance and, whenever States Parties deem it necessary, appropriate legal, psychological and financial assistance."

Option 2

3. Paragraph 2 (g) of option 2 should be revised to read:

"(g) To abolish progressively those practices which allow a person, in particular a woman or child, to be transferred to another person for payment, in return for the non-performance of an action or otherwise for the benefit of a criminal organization."

Article 3: Scope of application

Option 1

4. Paragraph 2 of option 1 should be revised to read:

"2. For the purposes of this Protocol, the term 'trafficking in persons' means the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of kidnapping, force, fraud, deception or coercion, or through abuse of the particular vulnerability of an alien due to that person's illegal or precarious administrative status, or through the exercise of other forms of pressure or abuse of authority such that the person has no real or acceptable choice but to submit to such pressures or abuse of authority."

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 1

5. Paragraph 1 should be revised to read:

"1. States Parties shall protect the privacy of victims of crimes covered by this Protocol by maintaining, in their interests, the confidentiality of legal proceedings related to trafficking in persons."

Paragraph 2

6. In paragraph 2, the words "permit providing, in appropriate cases" should be replaced with the word "furnish".

* Amendments previously issued in document A/AC.254/L.57.

Cameroon*

[Original: French]

Article 16: Entry into force

Insert the word "twentieth" in square brackets, thereby bringing the draft Protocol into line with the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, which contains the same provision.

China**

[Original: English]

Article 1: Purpose

1. It is proposed that article 1 be replaced with the following:

"*Article 1*
"*Purpose*

"The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and punish the crime of transnational trafficking in women and children [persons, especially women and children]."

Article 2: Scope of application

2. It is proposed to replace article 2 with the following:

"*Article 2*
"*Scope of application*

"1. This Protocol shall apply to transnational trafficking in women and children [persons, especially women and children,] as defined in paragraph 2 of this article.

"2. For the purposes of this Protocol:

"(a) 'Trafficking in women and children [persons]' means the recruitment, transportation, transfer, harbouring, receipt or buying of women and children [persons] by any of the following means:

"(i) The use of kidnapping, force, fraud, deception, coercion or other unlawful means;

"(ii) The offering or giving of unlawful payments or benefits to achieve the consent of the parents or the persons or institutions having the responsibility of protecting the women and children [persons] concerned;

"(b) The purpose of trafficking in women and children [persons] may include, in particular, illicit profit, forced labour, economic exploitation, sexual exploitation,

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* Amendment previously issued in document A/AC.254/L.103.

** Amendments previously issued in document A/AD.254/L.52.

forced marriage, illegal adoption, slavery or slavery-like situations, medical experiments or the transfer of organs;

"[(c) 'Child' means any person under the age of eighteen, unless the age of consent is under the age of eighteen, in accordance with the law applicable to the child.]"

Article 4: Assistance for and protection of victims of trafficking in persons

3. Paragraph 4 should read as follows:

"4. States Parties shall ensure international cooperation to assist women and children [persons], especially from developing countries, in their repatriation and reintegration, in particular by providing financial aid."

New article 4 bis

4. After article 4, add a new article 4 *bis* to read as follows:

"*Article 4 bis*

"*Measures to eliminate trafficking in women and children [persons]*

"1. States Parties shall, through bilateral and multilateral cooperation, take such measures as they deem effective to eliminate the consumer market that nurtures transnational trafficking in women and children [persons, especially women and children].

"2. States Parties shall ensure the strengthening of international cooperation to eliminate the root causes of the vulnerability of women and children [persons, especially women and children,] to such trafficking, such as poverty and underdevelopment."

Colombia*

[Original: Spanish]

Article 5: Status of the victim in the receiving State

1. The following wording is suggested for paragraph 2:

"2. Each State Party shall give appropriate consideration to humanitarian and support factors in determining the status of migrant of such a victim in its territory when it is the receiving State."

2. In the above text, the word "compassionate" has been replaced by the word "support", since the latter term would be more appropriate bearing in mind that the notion of support would be consistent with the victim assistance and protection measures adopted under the Protocol, such as those in articles 4 and 7. Also, the proposed text stipulates that the status of the victim is that of migrant and not any other status, thus preventing the victim from being liable to any form of punishment by reason of international trafficking.

* Amendments previously issued in document A/AC.254/5/Add.12.

Article 5 bis: Seizure and confiscation of gains

3. The following wording is suggested:

> "States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of property, instrumentalities and profits derived from the offences described in this Protocol, in conformity with individual guarantees enshrined in their domestic legislation. The proceeds from confiscation shall be used to defray the costs of providing due assistance to the victim."

4. In the suggested wording, the phrase "where deemed appropriate by States Parties and as agreed by them" has been deleted. This is because the agreements between States Parties would relate only to cooperation measures for the detection of offences or the confiscation of property, which would not follow from the proposed text.

5. It is felt that the article should expressly refer to confiscation of property and instrumentalities that is achieved through cooperation between States and to the possibility of sharing such proceeds.

Holy See*

[Original: English]

Article 1: Purpose

Option 1

Paragraphs 2 (b) and 2 (f)

1. Replace the words "victims of trafficking" with the words "victims and witnesses of trafficking".

2. Add a new subparagraph to read:

> "(...) To address the root causes of trafficking, especially those relating to extreme poverty, unemployment, low levels of education and social and cultural marginalization."

Article 3: Obligation to criminalize

3. Add an additional paragraph to read:

> "(...) States Parties shall also foster regional cooperation with non-States Parties in order to achieve greater uniformity in the definition, prevention and punishment of international trafficking in persons as well as in the protection of victims."

4. Add an additional paragraph to read:

Option 1

> "(...) States Parties shall consider facilitating the application of the principle of extraterritoriality in the legal pursuit of crimes relating to trafficking in persons."

* Amendments previously issued in document A/AC.254/L.32 and Add.1.

Option 2

"(...) States Parties shall consider the introduction of provisions of extraterritorial judicial law in matters relating to trafficking in persons."

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 1

5. Delete the words in square brackets.

Paragraph 2

6. Add the following words to subparagraphs (c) and (d):

"(c) Appropriate housing, education and care for children in governmental custody, preferably in a family or community context, as well as provision for direct contact with their families of origin; and

"(d) Appropriate housing, economic assistance, psychological, medical and legal support, as well as access to education and employment, for the victims of crimes covered by this Protocol;"

7. Add the following additional subparagraphs:

"(..) Emergency telephone lines and social assistance;

"(..) Assurance of temporary residence permits during the judicial process and during the entire period of their stay in the State concerned;

"(..) Legal aid and interpreters for victims of trafficking not able to pay as well as (financial) support for non-governmental organizations offering legal counselling to them."

Paragraph 3

8. Replace paragraph 3 with the following:

"3. Each State shall endeavour to provide for the physical safety of victims and witnesses of crimes covered by this Protocol while they are within its territory, as wells as for the protection of their family members by fostering cooperation with the countries where the family members reside."

Paragraph 4

9. Add an additional subparagraph to read:

"(...) Conversion of counterfeited proceeds and instruments of trafficking into educational and social programmes in favour of victims."

10. Add the following additional paragraphs after paragraph 4:

"(...) Each State shall ensure the benefits provided for by the Convention to victims of crime, independently of their ability to furnish relevant elements to the judicial inquiry;

"(...) Each State Party shall consider implementing measures, in cooperation with non-governmental organizations and local communities, to provide for the physical, psychological and social recovery and, when requested, spiritual assistance of victims of and witnesses to crimes covered by this Protocol, in order to foster their

health, self-respect and dignity, as well as their education and employment opportunities, in a manner appropriate to their age, gender and special needs;

"(...) Each State Party shall endeavour to provide assistance to children removed from forced labour and to reintegrate them into social life, by ensuring to them free primary education and informal education and by supporting their families;

"(...) Each State Party shall endeavour to develop, in cooperation with countries of origin or habitual residence of victims, programmes for the social reinsertion of victims in order to prepare them for return or to assist them once they have returned to their country of origin;

"(...) Each State Party shall consider promoting training programmes for public and voluntary agents working for the rehabilitation of victims of trafficking."

Article 5: Status of the victim in the receiving State

Paragraph 1

11. Add the words "and to have access to education and employment" after the words "to remain in its territory".

Article 6: Repatriation of victims of trafficking in persons

Paragraph 4

12. Add the words "After the end of judicial procedures against traffickers, unless the return would involve danger to the life of the victim" after the words "without proper documentation".

India*

[Original: English]

Article 1: Purpose

1. India supports option 1.

Paragraph 1

2. Add the words "the human rights of" after the words "the protection of".

3. At the end of the paragraph, add the following sentence:

"Note in this regard will be taken of the international human rights covenants, among others, the Convention on the Elimination of All Forms of Discrimination against Women,[1] the International Covenant on Civil and Political Rights,[2] the Convention on the Rights of the Child[3] and the Platform for Action adopted by the Fourth World Conference on Women, held in Beijing from 4 to 15 September 1995.[4]

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* Amendments previously issued in document A/AC.254/L.65.

[1] Resolution 34/180, annex.

[2] Resolution 2200 A (XXI), annex.

[3] Resolution 44/25, annex.

[4] A/CONF.177/20 and Add.1, chap. I, resolution 1, annex II.

Article 2: Scope of application

4. India supports option 2.

Article 4: Victim rehabilitation

5. In order to ensure clarity, the title of this article should be revised to read "Rehabilitation of the victim in the source country".

Paragraph 1

6. Add the words ", including state support for undertaking litigation against the traffickers or their accomplices," after the words "access to adequate procedures".

Italy*

[Original: English]

1. Italy would like to strengthen the provisions concerning the social assistance and protection of victims. It is therefore proposed to devote an article to "Protection of human rights and social assistance" and a separate article to "Fair treatment and protection of trafficked persons". A more detailed version of article 5, related to residence status, is also proposed. The Italian proposals incorporate language from the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997).

2. Articles 3 *bis*, 4 and 5 should read:

"*Article 3 bis*

"*Protection of human rights and social assistance*

"1. States Parties shall protect the human rights of trafficked persons, as defined in the Universal Declaration of Human Rights[1] and the International Covenant on Civil and Political Rights,[2] and ensure that they may be exercised without discrimination on any ground such as race, colour, sex, language, religion, (disability, age, sexual orientation),[3] political or other opinion, national or social origin, property, birth or other status.[4]

"2. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider providing, in cooperation with non-governmental organizations, as appropriate:

"(a) Safe housing;

"(b) Counselling and information, in the mother language of the trafficked persons or in another language they can speak and understand, in particular as regards their legal rights;

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* Amendments previously issued in document A/AC.254/L.30.

[1] Resolution 217 A (III).

[2] See General Assembly resolution 2200 A (XXI), annex.

[3] Language from article 13 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts.

[4] Including their status as victims of trafficking, as illegal migrants or prostitutes.

"(c) Material, psychological and economic assistance;

"(d) Work, education and training opportunities.

"*Article 4*

"*Fair treatment and protection of trafficked persons*

"1. [*Identical to article 4, paragraph 1*].

"2. Each State Party shall endeavour to provide, as appropriate, before, during and after all criminal, civil or other legal proceedings:

"(a) [*Identical to article 4, paragraph 2 (a)*];

"(b) [*Identical to article 4, paragraph 2 (b)*];

"(c) Appropriate measures to protect trafficked persons who act as a witness and, where necessary, their families living on its territory;

"(d) A change of identity, where necessary, if the threat is extremely serious.

"3. States Parties are encouraged to develop bilateral and multilateral agreements aimed at protecting trafficked persons and their families in countries of origin, transit and destination.

"4. In addition to measures provided pursuant to article 8 of this Protocol, States Parties, shall to the extent possible under their domestic law:

"(a) Provide for the notification of victims, upon their request, of any form of release from custody or detention of persons arrested for or convicted of trafficking;

"(b) Develop methods of investigation, detection and gathering of evidence that minimize intrusion into the private life of the trafficked person and are free from gender bias;

"(c) Establish, whenever possible, specialized police and prosecutorial units trained to deal with gender issues and sensitivities of the victim of trafficking, especially children.

"*Article 5*

"*Residence status of trafficked persons*

"1. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider enacting immigration laws or other measures that will grant the trafficked person, in appropriate cases, temporary or permanent residence status, including the possibility of gainful employment.

"2. [*Identical to article 5, paragraph 2*].

"3. A trafficked person shall be given the opportunity to produce evidence in support of a claim that repatriation could seriously endanger his or her life."

Libyan Arab Jamahiriya*

[Original: Arabic]

Article 1: Purpose

1. It is proposed that the two options under article 1 (Purpose) be merged as follows:

"*Article 1*
"*Purpose*

"The purpose of this Protocol is to prevent, suppress, punish and investigate international trafficking in persons, especially women and children, for the purpose of forced labour or sexual exploitation, and in implementation thereof, States Parties shall be encouraged:

"(a) To adopt effective measures, in accordance with their domestic law, to prevent trafficking in persons, especially women and children, as defined in this Protocol;

"(b) To ensure that victims of trafficking receive appropriate protection;

"(c) To promote cooperation among States Parties in order to combat trafficking in persons more effectively;

"(d) To provide, when appropriate, for the safe return of victims to their countries of origin or of habitual residence;

"(e) To inform and educate the public about the causes and consequences of trafficking in persons;

"(f) To provide victims, whenever necessary, with appropriate legal, medical and financial assistance;

"(g) To adopt the necessary penal legislative provisions for the purpose of punishing trafficking in persons;

"(h) To establish a system of judicial cooperation that will facilitate the prosecution of unlawful acts connected with international trafficking in persons;

"(i) To abolish progressively those practices which allow the transfer of a woman for payment or otherwise for the benefit of an international criminal organization."

Article 2: Scope of Application

2. The Libyan Arab Jamahiriya considers that the scope of application should be separated from the definitions and therefore proposes that article 2 cover the scope of application of the Protocol and another separate article cover definitions, as follows:

"*Article 2*
"*Scope of application*

"This Protocol shall apply to trafficking in persons, especially women and children, by threat, kidnapping, use of force, deception, fraud or inducement by offering payments and benefits for an unlawful purpose.

* Amendments previously issued in document A/AC.254/L.63.

"Article 2 bis
"Definitions

"For the purposes of this Protocol, the following definitions shall apply:

"(a) 'Child' shall mean any person under eighteen years of age;

"(b) 'Trafficking in persons' shall mean any act carried out or initiated by a criminal organization, jointly or through any of its members, for an illicit purpose or goal, that involves:

"(i) Promoting, facilitating or coordinating the holding, transferring or hiding of a child or a woman, with or without his or her consent, repeatedly or on one occasion, whether on behalf of another party or otherwise, for profit or otherwise, in order to force the person to perform, not to perform or to tolerate an act or to subject him or her unlawfully to the power of another person;

"(ii) Maintenance of a man, woman or child under the threat of some penalty in order to demand the performance of forced or compulsory labour to which the person has not voluntarily consented or in order to force the person, in accordance with custom or agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

"(iii) The prostitution or other form of sexual exploitation of a woman or a child, even with the consent of that person;

"(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

"(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

"(vi) Acts aimed at rendering uncertain, changing or annulling the marital status of a woman, whether for payment or not or for the promise thereof, whether in accordance with a traditional or customary practice or not and with or without the use of threats or abuse of authority;

"(vii) Extraction of body organs or organic tissue; [and]

"(viii) Reduction to slavery, servitude or other similar condition."

Mexico*

[Original: Spanish]

Article 3: Obligation to criminalize

1. The following new wording is proposed:

"1. States Parties that have not done so shall adopt such legislation and other measures as are necessary to establish as criminal offences the conduct referred to in article [...] of this Protocol and to impose penalties that take into account the grave nature of such conduct.

* Amendments previously issued in documents A/AC.254/5/Add.12 and Add.16.

"2. To the extent permitted by domestic law, intentional participation in any of the unlawful acts referred to in article [...] of this Protocol shall also be punishable."[1]

Article 4: Assistance for and protection of victims of trafficking in persons

2. The following new wording is proposed:

"1. In appropriate cases and to the extent permitted by domestic law, each State Party:

"(a) Shall prevent any form of punishment from being imposed on persons, in particular women and children, who are victims of international trafficking;

"(b) Shall ensure that victims of trafficking in persons, especially women and children, receive adequate protection;

"(c) Shall inform victims of crimes covered by this Protocol about the relevant court and administrative proceedings;

"(d) Shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons;

"(e) Shall assist victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

"(f) Shall provide appropriate housing, economic assistance and psychological, medical and legal support for victims of crimes covered by this Protocol;

"(g) Shall provide appropriate housing, education and care for children in governmental custody;

"(h) Shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

"2. In addition to the measures provided for in article 7 of this Protocol, each State Party that has not already done so shall enact immigration laws and/or adopt legislative or administrative measures that will enable identified victims of trafficking within its territory, after due consideration is given to humanitarian factors, to remain in its territory temporarily or, where appropriate, permanently."[2]

Article 5: Status of the victim in the receiving State

3. It is proposed that the text of article 5 be merged with that of article 4 as indicated above. Article 5 would thus be deleted.

Article 5 *bis*: Seizure and confiscation of gains

4. It is proposed that article 5 *bis* be deleted.

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[1] The wording of this paragraph is based on that of article 4 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV), annex).

[2] Text based on the proposal of France and the United Kingdom of Great Britain and Northern Ireland, amended by Mexico and Morocco.

Article 6: Return of victims of trafficking in persons

5. It is proposed that the title and text of article 6 be replaced by the following:

"*Article 6*
"*Repatriation of victims of trafficking in persons*

"1. Each State Party agrees to facilitate and accept the return of a victim of trafficking in persons who is a national of that State Party or who has the right of abode in the receiving State.

"1 *bis*. Each State Party shall agree to facilitate the repatriation of victims of such trafficking who desire to be repatriated or who may be claimed by persons exercising authority over them or whose repatriation is ordered in conformity with the domestic law of each State.[1]

"1 *ter*. Repatriation shall take place only after agreement is reached with the State of destination as to the identity and nationality of the persons concerned, as well as to the place and date of arrival at frontiers. Each Party to this Protocol shall facilitate the passage of such persons through its territory."[1]

"2. At the request of a State Party that is the receiving State, each State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of such trafficking is a national of the requested State.[2]

"3. In order to facilitate the return of victims of such trafficking who are without proper documentation, each State Party shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable such a victim who is a national of that State Party or who has the right of abode in the receiving State to re-enter its territory."

Article 4: Victim rehabilitation

Paragraph 4

6. It is proposed that the title of article 4 be replaced with the following: "Compensation and restitution to victims".

Article 7: Law enforcement measures

7. It is proposed that the title and text of article 7 be replaced with the following:

"*Article7*
"*Cooperation*

"1. Within the scope of their respective areas of jurisdiction and within the framework of their domestic law, States Parties shall cooperate with one another in preventing and combating international trafficking in persons.

"2. For the purposes of paragraph 1 of this article, States Parties shall exchange information and establish systems of judicial cooperation that will

[1] The wording of this paragraph is based on that of article 19, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

[2] No change is proposed in the wording of this paragraph.

contribute to improving the prevention and combating of unlawful conduct relating to international trafficking in persons. Moreover, they shall cooperate closely with a view to providing adequate protection and assistance for victims of such trafficking."

Article 8: Border controls

8. It is proposed that the title and text of article 8 be replaced with the following:

"*Article 8*
"*Training*

"All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area."

Morocco*

[Original: French]

Article 5: Situation of the victim in the receiving State

Paragraph 1

It is proposed that paragraph 1 of article 5 be replaced by the following:

"1. In addition to measures provided for pursuant to article 7 of this Protocol, each State Party that has not done so shall enact immigration laws and/or adopt legislative and administrative measures that permit identified victims of trafficking in persons, after due consideration is given to humanitarian and compassionate factors, to remain in its territory temporarily or, in appropriate cases, permanently."

Netherlands

[Original: English]

As mentioned in paragraph 28 of the report of the informal consultations on the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime during the fifth session of the Ad Hoc Committee (A/AC.254/19/Add.1), the Chairman requested the delegation of the Netherlands to submit its proposal to replace the phrase "sexual exploitation" and its definition with a broader definition of slavery for discussion at the sixth session of the Ad Hoc Committee. The following text of article 2 *bis* is submitted pursuant to that request:

* Amendment previously issued in document A/AC.254/5/Add.12.

"Article 2 bis
"Definitions

"For the purpose of this Protocol:

"(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of abduction, force, fraud, deception, coercion or debt bondage or by giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of slavery, servitude or forced labour. For the purposes of this Protocol, trafficking in persons includes subjecting a child to such trafficking regardless of whether that child has consented;

"(b) 'Slavery' shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;

"(c) 'Servitude' shall mean a condition of dependency whereby a person's abuse of power or use of coercion or force restricts the fundamental rights of another person and includes the acts described in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.[1] This definition does not effect the rights, obligations and responsibilities of States, parents and guardians set forth in the Convention on the Rights of the Child;[2]

"(d) 'Forced labour' shall mean [see article 2 *bis* (b) in document A/AC.254/Add.3/Rev.4];

"(e) 'Child' shall mean any person under 18 years of age."

Philippines

[Original: English]

Article 10: Prevention of trafficking in persons

Paragraph 1

1. The Philippines proposes the following amended text:

"1. Each State Party shall establish comprehensive policies, programmes and other measures."

Paragraphs 2 (a) and (b)

2. The Philippines proposes the following amended text:

"(a) Undertake, including through Governments, non-governmental organizations, intergovernmental organizations, and the private sector, partnerships with communities, especially those at risk of being targeted by traffickers;

"(b) Establish networks for gathering data and promote research, including the compilation of case law on trafficking cases to monitor legal and judicial precedents on trafficking cases internationally;"

[1] United Nations, *Treaty Series*, vol. 226, p. 3.

[2] Resolution 44/25, annex.

Paragraph 3

3. This paragraph should be deleted.

Spain

[Original: English and Spanish]

Article 2: Scope of application

Option 1

Paragraph 2

Spain proposes the following amended text:

"2. For the purposes of this Protocol, 'trafficking in persons' means the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of kidnapping, force, fraud, deception or coercion, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, with the aim of submitting them to any form of exploitation, as specified in article [...].

Syrian Arab Republic*

[Original: Arabic]

Article 1: Purpose

Option 1

1. Adopt option 1 and delete paragraph 2 to avoid repetition.

Article 2: Scope of application

2. Adopt paragraphs 1 and 2 of option 1 and paragraph 2 of option 2, after amending those paragraphs as follows:

(a) Add the words "or for any other illegitimate purpose" at the end of paragraph 2 of option 1;

(b) [Not applicable to the English text];

(c) Add the words "without her consent" after the words "transporting a woman" in paragraph 2 (c) (ii) of option 2;

(d) Add the words "or children" at the end of paragraph 2 (d) (v) of option 2;

(e) Replace the words "or coordinating" in paragraph 2 (d) (vi) of option 2 with the words "or acting as a broker in".

* Amendments previously issued in document A/AC.254/L.46.

Article 3: Obligation to criminalize

Paragraphs 1 and 2

3. Add the words "subject to their fundamental legal principles" after the word "adopt".

4. Delete the bracketed words "paragraphs 2 and 3" in all paragraphs.

Article 11: Cooperation with non-States Parties

5. Delete the words "[are encouraged to]" before the words "cooperate" and "notify".

Article 16: Entry into force

6. The number of instruments of ratification or accession required to be deposited for the Protocol to enter into force should be the same as the number required for the Convention to enter into force.

Thailand

[Original: English]

Thailand proposes the following amended text of article 11:

"*Article 11*
"*Cooperation with non-States Parties*

"States Parties are encouraged to cooperate with non-States Parties to prevent and punish trafficking in persons and to protect the rights of and care for trafficked persons. To that end, appropriate authorities of each State Party are encouraged to notify, in appropriate cases and when in the best interest of the trafficked person, the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of a non-State Party is in the territory of the State Party."

United States of America*

[Original: English]

Article 2
Scope of application

This Protocol shall, except as otherwise provided herein, apply to the prevention, investigation and prosecution of, as well as the protection of victims of, [international] trafficking in persons as defined in article 2 bis, [when involving an organized criminal group,] as defined in article [...] of the Convention.

* Amendments previously issued in document A/AC.254/L.105.

Article 2 bis
Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of abduction, force, fraud, deception, coercion [, by debt bondage] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation, forced labour, or [*here would be added any other types of exploitation that the Ad Hoc Committee might agree should be covered by the Protocol*]. For purposes of this Protocol, trafficking in persons [for the purpose of sexual exploitation] includes subjecting a child to such trafficking regardless of whether the child has consented;

(b) "Sexual exploitation" shall mean:

(i) Of an adult, [forced] prostitution, sexual servitude or participation in the production of pornographic materials for which the person does not give free and informed consent;

(ii) Of a child, prostitution, sexual servitude or use of a child in pornography;

(c) "Forced labour"shall mean all work or service exacted from any person under the threat or use of force [, directly or indirectly] or through the use of coercion, and for which the person does not give free and informed consent [, except·

(i) In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(ii) Any work or service not referred to in subparagraph (a) of this article that is normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(iii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iv) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(v) Any work or service that forms part of normal civil obligations of the State concerned; or

(vi) Minor communal services of a kind that, being performed by the members of a community in the direct interest of that community, can therefore be considered normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted with regard to the need for such services;]

(d) "Child" shall mean any person under 18 years of age.

(e) "Sexual servitude" shall mean sexual services exacted from any person under the threat or use of force;

(f) [*Definitions would be added for any additional type of conduct that is to be included in the definition of "trafficking in persons," as well as any other terms in the Protocol that need to be defined.*]